IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 5585 OF 2003

Murlidhar Phula Pagare ..... Petitioner.

versus

The State of Maharashtra and ors..... Respondents.

.....

Shri Anilkumar K.Patil for the petitioner.

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CORAM ; V.G.PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED; 14TH JANUARY, 2005.

P.C.;

1. By this petition the petitioner has made the following prayers:

(a) Records and proceedings be called for:

(b) On perusal of Records and Proceedings, this Hon'ble Court be pleased to issue a writ certiorari or any other appropraite writ, order or direction in the nature of writ certiorari under Article 226 of the Constitution of India, thereby quashing and setting aside the impugned Order dt.20.4.2001

passed by the Respondent No.4-Education Officer, to the extent of refusing to pay part of the payment towards difference in salary.

(c) This Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of writ of mandamus under Article 226 of the Constitution of India, thereby directing the Respondents to pay to the Petitioner within fixed time limit, the amount of differnece in the salary to which the petitioner is legitimately entitled.

(d) This Hon'ble Court be pleased to issue a writ of mandamus or any other appropraite writ, order or direction in the nature of writ of mandamus under Article 226 of the Constitution of India, thereby directing the Respondent No.4-Education Officer to recognize the Petitioner as a Head Master and further directing Respondent No.3 to give all the necessary rights of functioning as a Head Master including that of authorized signatory rights as a Head Master.

(e) This Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of writ of mandamus under Article 226 of the Constitution of India, thereby directing the Respondent No.3 to reduce the workload of the petitioner from 34 periods to 10 periods since the petitioner has been promoted as a Head Master and he is duly qualified for the said post.

(f) Pending hearing and final disposal of this petition, this Hon'ble Court be pleased to direct the Respondent No.4-Education Officer to recognize the petitioner as a Head Master and further direct the Respondent NO.3 to give all the necessary rights of functioning as a Head Master including that of authorized signatory rights as a Head Master.

(g) Pending hearing and final disposal of this petitioner, this Hon'ble Court be pleased to direct the Respondent No.3 to reduce the workload of the petitioner from 34

periods to 10 periods since the petitioner has been promoted as a Head Master and he is duly qualified for the said post.

(h) Ex-parte ad-interim reliefs in terms of prayers clause (f) and (g) above be granted in favour of the petitioner.

(i) Any other further relief which this Hon'ble Court dems fit and proper be kindly granted in favour of the petitioner.

(j) In the peculiar facts and circumstances of the case, this Hon'ble Court be pleased to award heavy costs to the petitioner, particularly from the office of the Respondent No.4-Education Officer, Zilla Parishad, Nashik.

2. In so far as the prayers pertaining to payment of money due is concerned, the petitioner has already taken resort to Civil Court. Litigation is pending and these prayers which are identical to such relief cannot be taken care of in this litigation.

3. The petitioner also complained by this petition

that he was the seniormost teacher and therefore liable to be promoted to the post of Head Master in the year 1998 when the regular Head Master retired from the school. The claim of the petitioner in effect is a claim that he should have been made Head Master but was wrongly superseded. His proper remedy is therefore an appeal under section 9 of the Act.

4. Section 9 provides interalia that any employee who is superseded by the management while making appointment to any post by promotion may make an appeal. Assistant Head Master is therefore an employee of the school who alleges that he has been wrongly superseded while making appointment to the post of Head Master by promotion. The grievance therefore can squarely be covered by provisions of section 9(i)(b) of the Act.

5. However, the petitioner was trying to pursue various remedies in various courts. His earlier appeal before the School Tribunal was allowed and he was directed to be reinstated for which action he was required to fight. Ultimately he came before this court by this writ petition claiming the reliefs mentioned above. He is also taken resort to the proper remedy of Civil Suit for recovery of money due. In

such circumstances he is liable to be relaxed to the position of appeal under section 9(i)(a) of the Act. It is obvious however from the facts, that his appeal before the School Tribunal would be barred by limitation as provided by section 9 of the Act. However this court when it relegates a person to alternate efficacious remedy statutorily available has the power to issue necessary inclusion of prayers of condonation of delay. The Supreme Court has observed so in the judgment reported in **1996 (VI) S.C.C. page 199.** We therefore deem it just and proper to direct that the petitioner shall file an appeal before the tribunal claiming his supersession to be illegal. If such an appeal is filed within one month from today, the school tribunal will consider the appeal only on merit and not rejected it on the ground of limitation only. With these observations the petition is disposed of.

6. Parties to act on an authenticated copy of this order.

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